

REMARKS/ARGUMENTS

Claims 1, 2, and 4-18 remain in this application.

Claim 3 has been cancelled and its subject matter has been incorporated into claim 1. The dependency of claim 4 has been changed to claim 1.

The subject matter of claim 3 has been incorporated into independent claims 10 and 14.

Claims 1, 10, and 14 have been amended to remove the recitation that the tang body and deployable tangs are made of different materials.

In response to the Office Action of September 23, 2011, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Objections to the Specification

The specification stands objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Claim 1 recites that the tang body and the tang are made of different materials and Claim 3 further recites that the tang body is made from a first material and the tangs are made from a second material. However, Claim 4 recites that the tang body and the tangs are made from titanium having different hardness characteristics. Page 10, lines 5-9,

clearly disclose that the tang body and the tangs are either made from two different materials, or the tang body and the tangs are made from the same material with different characteristics. Therefore, the specification does not provide antecedent basis for Claim 4 which requires the elements be from different materials, wherein the two different materials are both titanium.

Claim 1 has been amended to remove the recitation that the tang body and deployable tangs are made of different materials.

Applicant respectfully requests that the objection to the specification now be withdrawn.

Rejections under 35 USC 112

Claims 4-6 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 4 requires that the two different materials forming the tang body and the tangs are both titanium, which contradicts with both Claims 1 and 3 and with the disclosure of the specification. Therefore, Claim 4 is unclear if the material for the tang body and the tangs are different materials as required by Claims 1 and 3, or if the materials of the tang body and the tangs are both titanium as required by Claim 4.

Claim 1 has been amended to remove the recitation that the tang body and deployable tangs are made of different materials.

Applicant respectfully requests that the rejection of Claims 4-6 under 35 U.S.C. 112, second paragraph, now be withdrawn.

Rejection under 35 USC 103(a)

Claims 1, 2, and 7-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bramlet (U.S. Patent No. 6,183,474) in view of Bramlet (U.S. Patent No. 6,447,546).

Regarding Claim 1, the Examiner alleges that Bramlet (474) discloses a device (see Figures 45 and 46) comprising an elongated cannulated shaft with tang exit holes and at least one deployable tang. The Examiner alleges that Bramlet (474) further discloses the device comprising an end cap bonded to one end of the shaft by a first bond (497; column 21 lines 48-64). The Examiner alleges that Bramlet (474) further discloses the device comprising a tang body (463) slidably disposed in one end of the shaft, wherein the external surface of the tang body is congruently shaped to restrict movement of the tang body to the longitudinal axis of the cannulated shaft. The Examiner alleges that Bramlet (474) further discloses a device wherein the at least one tang (460) includes a first end and a second end, wherein the at least one tang is separate from the tang body and the first end is bonded to the tang body by a second bond. The Examiner alleges that Bramlet (474)

further discloses a device wherein the second end of the at least one tang is capable of moving through one tang exit hole in the cannulated shaft upon longitudinal movement of the tang body (see Figure 45). The Examiner alleges that Bramlet (474) further discloses a device wherein the tang body further includes a link capable of cooperating with a tool to generate longitudinal movement of the tang body. Regarding Claims 2 and 8, the Examiner notes that the device of Bramlet (474) appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the Applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding Claim 7, the Examiner alleges that Bramlet (474) discloses a device wherein the cannulated shaft and the end cap are made from titanium. Regarding Claim 9, the Examiner alleges that Bramlet (474) discloses a device wherein the link comprises a central aperture through the tang body having internal threads capable of engaging a draw bolt. Regarding Claim 10, the Examiner alleges that Bramlet (474) discloses the invention as claimed and discussed above. Regarding Claim 11, the Examiner alleges that Bramlet (474) discloses a device wherein the cannulated shaft, the end cap, and the plurality of tangs are made from titanium, wherein the tangs have a stiffness that is less than the stiffness of the tang body

as discussed above. Regarding Claim 12, the Examiner alleges that Bramlet (474) discloses a device wherein the cannulated shaft includes a plurality of intersecting planar internal walls and the tang body includes a plurality of intersection planar exterior surfaces, wherein the internal walls of the shaft engage the exterior surfaces of the tang body to limit the movement of the tang body in the longitudinal direction as discussed above. Regarding Claim 13, the Examiner alleges that Bramlet (474) discloses a device wherein the number of tangs is equal to 4. Regarding the welding of the tangs to planar surfaces of the tang body the Examiner notes that the device of Bramlet (474) appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the Applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983). Regarding Claims 14-16, the Examiner notes that the device of Bramlet (474) appears to be substantially identical to the device claimed, although produce by a different process, therefore the burden is upon the Applicant to come forward with evidence establishing an unobvious difference between the two. In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

The Examiner admits that Bramlet (474) fails to disclose the device wherein the tang body and the tangs are of different materials.

The Examiner alleges that Bramlet (546) teaches a device (for example Figure 1) comprising a tang body (210) and tangs (220), wherein the tang body and the tangs are formed of different materials, such as titanium and nitinol (see column 4, lines 16-23).

The Examiner then concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Bramlet (474) wherein the tang body and the tangs are made from different materials in view of Bramlet (546), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

Claim 3 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Independent Claims 1, 10, and 14 have been amended to incorporate the allowable subject matter of Claim 3 therein.

Accordingly, it is respectfully submitted that amended Claims 1, 10, and 14 are now allowable. Claim 2, 4-9, 17, and 18 depend from Claim 1. Claims 11-13 depend from Claim 10. Claims 15 and 16

depend from Claim 14. Accordingly, since all of these dependent claims depend directly or indirectly from allowable independent claims, these independent claims are considered to be allowable also.

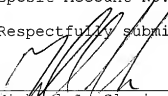
Accordingly, Applicants respectfully submit that the claimed surgical intramedullary system, surgical orthopedic system and surgical system distinguish over the prior art and respectfully request that the rejections of Claims 1-18 under 35 U.S.C. 103(a) now be withdrawn.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested. Should there be any remaining issues which can be resolved via an Examiner's Amendment; the Examiner is urged to call the undersigned in order to expedite the prosecution of this application.

The Commissioner for Patents is hereby authorized to charge any deficiency in any fees due or credit any overpayments in any fees paid on the filing to Deposit Account No. 13-0439.

Respectfully submitted,



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